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TN REGULATORY AUTHORITY
DOCKET ROOM
February 26, 2002

RECEIVED

FEB 27 2003

SARA KYLE, COMMISSIONER
TN PUBLIC SERVICE COMM.

The Honorable Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: Complaint of Ben Lomand Communications, Inc. against Citizens Communications Company of Tennessee, LLC d/b/a Frontier Communications of Tennessee;
Docket No. 02-01221

Dear Chairman Kyle:

Enclosed are the original and fourteen (14) copies of Ben Lomand Communications, Inc.'s Motion to Compel Responses to Its Discovery Requests. Please return one date stamped copy in the SASE also enclosed.

Should you have any questions or require anything further at this time, please do not hesitate to contact me.

Sincerely,

H. LaDon Baltimore /lbcg

H. LaDon Baltimore
Attorney for Ben Lomand Communications, Inc.

LDB/dcg
Enclosures

cc: Levoy Knowles
Guilford F. Thornton, Jr., Esq.
Richard Collier, Esq.
James Dempster, Esq.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

'03 FEB 27 AM 11 40

IN RE:

COMPLAINT OF BEN LOMAND)
COMMUNICATIONS, INC. ,)
TN REGULATORY AUTHORITY
DOCKET ROOM

Against

DOCKET NO. 02-01221

CITIZENS COMMUNICATIONS)
COMPANY OF TENNESSEE LLC,)
d/b/a FRONTIER COMMUNICATIONS)
OF TENNESSEE.)

**BEN LOMAND COMMUNICATIONS, INC.'S
MOTION TO COMPEL RESPONSES TO ITS DISCOVERY REQUESTS**

Pursuant to Tennessee Rules of Civil Procedure 37.01 and Tennessee Regulatory Authority Rule 1220-1-2-.11(9), Ben Lomand Communications, Inc. ("Ben Lomand"), by and through its undersigned counsel, hereby requests that the Tennessee Regulatory Authority ("Authority" or "TRA") compel Citizens Communications Company of Tennessee LLC, d/b/a Frontier Communications of Tennessee ("Frontier") to provide full and complete responses to the enumerated discovery requests which were filed and served on Frontier on February 18, 2003. As set forth in greater detail below, Frontier's objections and responses are legally insufficient to allow Frontier to evade Ben Lomand's discovery requests. According, Ben Lomand requests that the TRA deny Frontier's objections and compel Frontier to respond.

I. GENERAL RESPONSE

Frontier's specific objections, which pertain to the relevancy of the issue of predatory pricing, contravene Tennessee's liberal discovery rules.¹ See, Harrison v. Greenville Ready Mix, Inc., 220 Tenn. 293, 301-02, 417 S.W.2d 48, 51 (1967).

Tennessee Rules of Civil Procedure 26 governs what is discoverable in Tennessee. This rule is broad and provides that parties may "obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved whether it relates to the claim or defense of the party seeking discovery or if the claim or defense of any other party. ..." Tenn. R. Civ. P. 26.02(1).

Ben Lomand's discovery requests are well within the scope of and reasonably calculated to lead to admissible evidence concerning the issues of this matter.

The burden is on Frontier, the party resisting discovery, to clarify and explain its objections and to provide support therefor. See, Roesberg v. Johns Manville, 85 FRD 292 (ED Penn. 1992); Miller v. Panucci, 141 FRD 292, 311 (CD Calif. 1992) (parties opposing discovery are required to carry a heavy burden of showing why discovery should be denied).²

¹ Frontier's response included "General Objections" that do not relate to any specific discovery request, which objected to discovery requests that they exceed the cost justification filed for the April 11 Tariff, violate attorney-client privilege or work product doctrine, proprietary and confidential absent a protective order, and requests information not required by the applicable rules of the TRA. The TRA should ignore such General Objections because they are not tied to specific discovery requests. See, Duncan v. Duncan, 789 S.W.2d 557, 560 (Tenn. App. 1990).

² These references to Federal Rule of Civil Procedure 26 are quoted because, in general, Tennessee Rule of Civil Procedure 26 is identical to Federal Rule of Civil Procedure 26. See, Austin v. City of Memphis, 684 S.W.2d 624, 631 (Tenn. Ct. App. 1984).

II. RESPONSES TO FRONTIER'S SPECIFIC OBJECTIONS

A. Interrogatories

1. Ben Lomand has no objections to Frontier revealing its witnesses when it files its sworn testimony. However, Ben Lomand reserves the right to request a witness list if there is a modification of the pre-hearing or hearing schedule.

2. Interrogatory 2 seeks the number of access lines in service as of December 31, 2001 and December 31, 2002 in McMinnville and Sparta. It is necessary to obtain such information in order to ascertain the number of access line increases, if any, in order to show the increase in Frontier's business. This request is relevant because an increase in business and elimination of competitors is an essential factor in predatory pricing. Furthermore, an Agreed Protective Order has been signed by the parties, thus mooted the objection of "proprietary information."

3. Interrogatories 3, 4, and 5 are appropriate to proving the allegation of predatory pricing. Frontier objects to Interrogatories 3, 4, and 5 as a General Objection that any information to predatory pricing is not to be furnished. Frontier makes this claim based on the fact that the allegations of undue preference and unjust discrimination were not allowed. However, the allegation of predatory pricing was allowed. Frontier cannot escape addressing this issue by stating the tariff meets the operative cost floor set forth in Tenn. Code Ann. §65-5-208(c) and that Frontier has provided information to the TRA for its April 11 tariff. Ben Lomand and the TRA are entitled to know whether the cost study is accurate, what information Frontier furnished to the TRA, and the information Frontier has in its possession which was used to arrive at such cost study, but which was not furnished to the TRA. Such information is necessary and

relevant to prove predatory pricing. Also, predatory pricing does not have to be below cost. Furthermore, Tenn. Code Ann. §65-5-208(c), while permitting price floors, also prohibits such price floors to be part of “predatory pricing, price squeezing, ... or other anti-competitive practice.”

4. Frontier’s objections to Interrogatories 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 are without merit. Frontier objects that the Interrogatories pertain to the allegations of undue preference and unjust discrimination, and that any information regarding predatory pricing is not to be furnished. See Frontier’s General Objection 1. (See attached Exhibit 1). The information requested in Interrogatories 6 through 16 is relevant and necessary to prove predatory pricing. It is essential to know why certain services have been offered in the McMinnville and Sparta areas and not elsewhere in Tennessee. Again, Ben Lomand reiterates that such information is necessary and relevant to the allegation of predatory pricing. The information requested may prove that there has been predatory pricing by showing that Frontier has targeted the McMinnville and Sparta exchanges for the elimination or discouragement of competitors by setting its tariffs below cost, offering upgraded services in such exchanges, and that Frontier offered such tariffs elsewhere than in those exchanges in Tennessee with the result that such tariffs may have been rejected or led to elimination or discouragement of competition in such exchanges. Also, see the response in paragraph 3 to Frontier’s objection.

5. Interrogatories 12 through 14 regarding Contract Service Arrangements are relevant for pricing information. Furthermore, such issue was not eliminated by the TRA from consideration in this matter. The TRA disallowed the discrimination allegations, but not predatory pricing and the consideration of Contract Service Arrangements.

6. Ben Lomand wishes to point out that, reflective of its allegation that Frontier may be subsidized by other Citizens' affiliates, in its response Frontier interchangeably uses "Frontier" and "Citizens," with "Citizens" being referenced more than "Frontier."

7. The response to Frontier's objections to Interrogatories 2 through 5 are incorporated as if set forth fully herein.

B. Data Requests

1. Frontier/Citizens has stated that, without waiving its objections, it will respond to Data Request 1 and produce all applicable costs studies and internal correspondence.

2. Citizens/Frontier should be compelled to answer Data Requests 3 through 13. Such information is necessary to determine the issue of predatory pricing. Ben Lomand restates its responses to Frontier's objections to Interrogatories 2 through 16 which are incorporated as if fully set forth herein.

3. Frontier states that it does not have Contract Service Arrangements in McMinnville and Sparta, but does not answer regarding the remainder of Tennessee. Such information is necessary in order to compare Contract Service Arrangements to the tariff in dispute in this matter and is relevant to the issue of predatory pricing.

C. Request for Admissions

1. Ben Lomand recognizes that Frontier/Citizens objected to Request for Admissions 1 through 5, but, without waiving its objections, denied all such request for admissions.

III. CONCLUSION

For the foregoing reasons, the Authority should grant Ben Lomand's Motion to Compel and direct Frontier to respond completely and fully to Ben Lomand's discovery requests.

Respectfully submitted,



H. LaDon Baltimore, BPR #003836

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Counsel to Ben Lomand Communications, Inc.

Certificate of Service

The undersigned hereby certifies that on this the 26th day of February, 2003, a true and correct copy of the foregoing has been forwarded via first class U. S. Mail, hand delivery, overnight delivery, or facsimile transmission to the following.

Guilford F. Thoronton, Jr., Esq.
Stokes, Bartholomew, Evans & Petree
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Nashville, TN 37219

Richard Collier, Esq.
General Counsel
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238



H. LaDon Baltimore

IN RE:

Against

**CITIZENS TELECOMMUNICATIONS
COMPANY OF TENNESSEE, LLC,
d/b/a FRONTIER COMMUNICATIONS
OF TENNESSEE.**

Docket No. 02-01221

Citizens Telecommunications Company of Tennessee, LLC, ("Citizens") responds to the Request for Discovery From Ben Lomand Communications, Inc. ("BLC") as follows:

1. As a preliminary matter, Citizens objects to these discovery requests because they are overbroad and unduly burdensome, and they seek information that is not relevant to these proceedings or likely to lead to the discovery of relevant evidence based on the prior rulings of the TRA, particularly the ruling of the TRA on Citizens' Motion to Dismiss at its January 27, 2003 Conference (the "January 27 Conference").

At the January 27 Conference, the TRA dismissed all the claims relating to undue preference and unjust discrimination but allowed the case to proceed solely on the issue of whether Citizens' pricing in its tariff filed April 11, 2002 (the "April 11 Tariff") was predatory. Accordingly, based on the TRA's ruling, the only issue currently before the TRA is whether the prices for the services offered in the April 11 Tariff are below cost. The operative cost floor is

EXHIBIT

1

set forth in T.C.A. § 65-5-208(c). As is stated in Citizens' Motion to Dismiss, in connection with the filing of the April 11 Tariff Citizens provided cost justification for the April 11 Tariff.

2. Citizens objects to the discovery requests to the extent that they seek the discovery of information or documents subject to the attorney-client privilege or work product doctrine.

3. Citizens objects to the discovery requests to the extent that they seek information and/or documents that are proprietary and confidential absent a protective order which (a) limits the production of such information and/or documents for review by outside counsel for BLC and any experts retained by such counsel; (b) limits the use of confidential information and/or documents to this proceeding; and (c) requires that the information and/or documents designated as confidential remain under seal.

4. Citizens objects to the discovery requests to the extent that they request information that is not required by the applicable rules of the TRA.

Without waiving these General Objections, Citizens responds to the Interrogatories, Data Requests, and Requests for Admission as follows:

INTERROGATORIES

1. Identify each person whom you expect to call as a witness at any hearing in this case.

ANSWER: At this time Citizens does not know whom it will call as a witness. However, the identity of Citizens' witness will be revealed when Citizens files its sworn testimony in accordance with the rules of the TRA.

2. State the number of access lines for Frontier and its affiliates in service as of December 31, 2001 and December 31, 2002 in McMinnville and Sparta.

ANSWER: Citizens objects to this request for the reasons stated in its General Objections 1 and 3. This information does not relate to whether the pricing in the April 11 Tariff is below cost, and it is proprietary information.

3. What sources and amounts of funding does Frontier Communications of Tennessee receive from its affiliates?

ANSWER: Citizens objects to this request for the reasons stated in its General Objections 1 and 3. Without waiving its objections, Citizens is willing to provide BLC's counsel with (a) copies of the monthly financial reports ("3.01 Report") it files monthly with the TRA that are current through November 2002, (b) copies of any subsequent similar financial filings, and (c) Citizens cost justification for the April 11 Tariff that was filed with the TRA, provided that this material is produced pursuant to a protective order as set forth in General Objection 2.

Without waiving its objections, Citizens denies that it is pricing services in McMinnville and Sparta below cost. Because the prices are above Citizens' cost, Citizens has no need for any funding from the revenues from other services to defray the cost of offering those services.

4. What is the rate of Return on Investments for Frontier's Tennessee exchanges as of December 31, 2002?

ANSWER: Citizens restates its response to Interrogatory No. 3, which is incorporated herein by reference.

5. What is the rate of Return on Investments for Frontier's exchanges in McMinnville and Sparta as of December 31, 2002?

ANSWER: Citizens restates response to Interrogatory No. 3, which is incorporated herein by reference. Furthermore, without waiving its objections, Citizens states that it does not calculate a rate of return on an exchange basis.

6. Please explain the difference between the Versaline Centrex offering and regular Digital Centrex Service.

ANSWER: Citizens objects to this request for the reasons set forth in its General Objection 1. Without waiving its objections, the product offerings are described in Citizens' tariffs on file with the TRA, Citizens will provide a copy once an acceptable protective order has been entered.

7. Why is Versaline Centrex Service offered in McMinnville and Sparta and not elsewhere in Tennessee?

ANSWER: Citizens objects to this request for the reasons set forth in its General Objection 1. Without waiving its objections, Citizens states that it may roll out the Versaline Centrex Service to other customers. Furthermore, as has been recognized by the TRA, Citizens faces stiff competition in McMinnville and Sparta.

8. Why does Frontier offer the April 11, 2002 reduced flat rate business and Versaline Centrex Tariff's rates in the McMinnville and Sparta exchanges and not in its other Tennessee exchanges?

ANSWER: Citizens objects to this request for the reasons set forth in its General Objection 1. As has been recognized by the TRA, Citizens faces stiff competition in McMinnville and Sparta.

9. In what exchanges in other states has Frontier and its affiliates offered tariffs similar to the April 11, 2002 Tariff in which the rates/tariffs are lower than in other Frontier exchanges in such state?

ANSWER: Citizens objects to this request for the reasons set forth in its General Objection 1.

10. For those exchanges and/or states listed in the answer to Interrogatory No. 9, list such rates/tariffs that have been rejected, revoked, or disapproved by the respective public utility commissions (equivalent to the Tennessee Regulatory Authority)?

ANSWER: Citizens restates its response to Interrogatory No. 9, which is incorporated herein by reference.

11. For those exchanges and/or states listed in the answer to Interrogatory No. 9, list the competitors (ILECS/CLECS) which terminated business in such exchanges; were sold to other competitors or Frontier and its affiliates; or were merged with another competitor or Frontier and its affiliates?

ANSWER: Citizens restates its response to Interrogatory No. 9, which is incorporated herein by reference.

12. In what manner were existing Frontier customers (excluding win-back customers) made aware that Contract Service Arrangements with Frontier were available to them?

ANSWER: Citizens objects to this request for the reasons stated in its General Objection

1. Furthermore, Contract Service Agreements ("CSA's") are not at issue in this case. The rates at issue in the April 11 Tariff are tariffed rates, and CSA's are by definition rates not covered by general tariffs.

13. What is the Tariff Contract Service Arrangement rate for flat rate business service in all other Frontier Tennessee exchanges?

ANSWER: Citizens restates its response to Interrogatory No. 12, which is incorporated herein by reference.

14. What is the Contract Service Arrangement rate for Basic Centrex service for McMinnville and Sparta and for all other Frontier Tennessee exchanges?

ANSWER: Citizens restates its response to Interrogatory No. 12, which is incorporated herein by reference. Without waiving its objections, Citizens states that it does not currently have any CSA's with any customers in McMinnville or Sparta.

15. Does Frontier offer Unbundled Network Element Pricing in any exchanges in Tennessee?

ANSWER: Citizens objects to this request for the reasons set forth in its General Objection 1. Additionally, this interrogatory appears to request information as to rates offered to competitive CLECS, which is not at issue in this proceeding.

16. List the exchanges in Tennessee in which Frontier is faced with competition from other land-line competitors.

ANSWER: Citizens objects to this request for the reasons set forth in its General Objection 1.

DATA REQUESTS

1. Identify and produce copies of all Frontier cost studies, supporting data, correspondence, and documentation arising from or related to the April 11, 2002 Tariff, including, but not limited to, cost studies and supporting data not furnished to the Tennessee Regulatory Authority and all other documentation and/or calculations relied upon in producing such cost studies.

RESPONSE: Citizens restates its response to Interrogatory No. 3. In addition, Citizens objects to this request to the extent that any documents responsive to this request, which is overbroad, may be subject to the attorney-client privileged or work product doctrine.

Without waiving this objection and subject to an appropriate protective order, Citizens will produce applicable cost studies and internal correspondence, once an acceptable protective order has been entered in this matter.

2. Identify the persons who proposed, calculated, prepared, reviewed, and/or approved (excluding Tennessee Regulatory Authority personnel) the April 11, 2002 Tariff.

RESPONSE: Citizens objects to this request for the reasons set forth in its General Objection 1. Without waiving its objections, Citizens states that numerous persons were involved in proposing, calculating and reviewing the April 11 Tariff. J. Michael Swatts was primarily responsible for making the decision to implement and file the April 11 Tariff. Citizens' personnel referenced in the internal correspondence which is being produced herewith also participated in the preparation of the April 11 Tariff.

3. Identify and produce all Frontier Contract Service Arrangements for flat rate business and Versaline Centrex Service in Tennessee, including those for customers in the exchanges of McMinnville and Sparta, and in the counties of Cumberland, Putnam, and Weakley.

RESPONSE: Citizens objects to this request for the reasons stated in its General Objections 1 and 3. Additionally, Citizens restates its response to Interrogatory 12, which is incorporated herein by reference. Furthermore, Tariff filings are a matter of public record.

4. Of the Contract Service Arrangements listed in the response to Data Request No. 3, how many of those contracts were entered into with existing Frontier customers (excluding win-back customers)?

RESPONSE: Citizens restates its response to Data Request No. 3, which is incorporated herein by reference.

5. Identify and produce all Frontier cost studies, supporting data, correspondence, and documentation, including cost studies and supporting data not furnished to the Tennessee Regulatory Authority, arising from or related to the Contract Service Arrangements.

RESPONSE: Citizens restates its response to Data Request No. 3, which is incorporated herein by reference.

6. Identify the persons who proposed, prepared, reviewed, and/or approved (excluding Tennessee Regulatory personnel) the Contract Service Arrangements.

RESPONSE: Citizens restates its response to Data Request No. 3, which is incorporated herein by reference.

7. Identify and produce Frontier's most recent audited financial statements (Balance Sheet, Income Statement, and Statement of Cash Flows).

RESPONSE: Citizens restates its response to Interrogatory No. 3, which is incorporated herein by reference.

8. Identify and produce Frontier's projected financial statements (three (3) years).

RESPONSE: Citizens restates its response to Interrogatory No. 3, which is incorporated herein by reference.

9. Identify and produce Frontier's Tennessee Capital Expenditures Budget for 2001, 2002, and 2003.

RESPONSE: Citizens restates its response to Interrogatory No. 3, which is incorporated herein by reference.

10. Identify and produce Frontier's Tennessee Capital Expenditures Budget for 2001, 2002, and 2003 for Sparta and McMinnville.

RESPONSE: This request is adequately addressed in Citizens' response to Interrogatory No. 3, which is incorporated herein by reference.

11. Produce any and all organizational charts identifying any of the entities and/or divisions or offices identified in these Discovery Requests.

RESPONSE: Citizens restates its response to Interrogatory No. 3, which is incorporated herein by reference

12. Identify and produce copies of all correspondence and documentation regarding Frontier's business plan in the McMinnville and Sparta exchanges related to the April 11, 2002 Tariff.

RESPONSE: Citizens restates its response to Interrogatory No. 3 and Data Request No. 1, which is incorporated herein by reference. In addition, Citizens objects to this request to the extent that any documents responsive to this request may be subject to the attorney-client privileged or work product doctrine.

13. Identify and produce copies of all correspondence and documentation regarding Frontier's analysis of the effect of the April 11, 2002 Tariff on Ben Lomand and other competitors of Frontier in the McMinnville and Sparta exchanges.

RESPONSE: Citizens restates its response to Interrogatory No. 3, which is incorporated herein by reference. In addition, Citizens objects to this request to the extent that any documents responsive to this request may be subject to the attorney-client privileged or work product doctrine.

REQUEST FOR ADMISSIONS

1. Versaline Centrex Service contains numerous additional features (including full Network Access) than Centrex Business Service, but at a lower rate than Centrex Basic Service.

RESPONSE: Citizens objects to this request for the reasons set forth in its General Objection 1.

Furthermore, without waiving its objections, Citizens denies this request to the extent that it seeks an admission that is inconsistent with Citizens' published tariffs, including the April 11 Tariff, which speak for themselves as to product features and rates.

2. Frontier Communications of Tennessee is offering the April 11, 2002 Tariff rates below cost.

RESPONSE: Denied.

3. Frontier Communications of Tennessee uses revenues from non-competitive services to subsidize competitive services in Sparta and McMinnville.

RESPONSE: Citizens objects to this request for the reasons set forth in its General Objection 1. Furthermore, Citizens objects to this request because it is vague and ambiguous and argumentative. Citizens does not know what BLC means by "non-competitive services" or "competitive services."

Without waiving its objections, Citizens denies this request to the extent that it seeks to establish that Citizens is pricing services in McMinnville and Sparta below cost. Because the

prices are above Citizens' cost, Citizens has no need for any funding from the revenues from other services to defray the cost of offering those services.

4. Frontier Communications offers the same April 11, 2002 Contract Service Arrangement pricing for flat business service and Versaline Centrex Service to wholesale customers as well as retail customers in McMinnville and Sparta.

RESPONSE: Citizens objects to this request for the reasons set forth in its General Objection 1. Additionally, Citizens restates its response to Interrogatory No. 12, which is incorporated herein by reference.

Without waiving its objections, Citizens denies this request.

5. Frontier Communications of Tennessee receives subsidization from affiliates.

RESPONSE: Citizens objects to this request for the reasons set forth in General Objection 1. Additionally, Citizens objects to this request because it is vague and ambiguous. Citizens does not know what BLC means by "subsidization."

Without waiving its objections, Citizens denies this request to the extent that it seeks to establish that Citizens is pricing services in McMinnville and Sparta below cost. Because the prices are above Citizens' cost, Citizens has no need for any funding from the revenues from other services to defray the cost of offering those services.

VERIFICATION

STATE OF WEST VIRGINIA

COUNTY OF MERCER

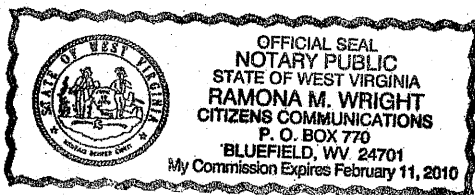
I, J. Michael Swatts, after first being duly sworn, state that I am State Government Affairs Director of Citizens Communications Company of Tennessee, LLC, d/b/a Frontier Communications of Tennessee, and that, as State Government Affairs Director, I am authorized by Citizens Communications Company of Tennessee, LLC, d/b/a Frontier Communications of Tennessee to verify answers to the foregoing discovery requests and state that the answers thereto are true and correct to the best of my knowledge, information and belief.

CITIZENS TELCOMMUNICATIONS
COMPANY OF TENNESSEE, LLC, d/b/a FRONTIER
COMMUNICATIONS OF TENNESSEE

By: *J. Michael Swatts*
Title: State Government Affairs Director

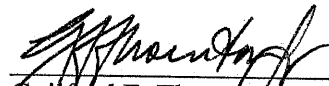
Sworn to and subscribed
before me on this 14th
day of FEBRUARY, 2003.

Ramona M. Wright
Notary Public
My Commission Expires: 2/11/2010



As to objections:

Respectfully submitted,



Guilford F. Thornton, Jr. (No. 14508)

Charles W. Cook, III (No. 14274)

STOKES BARTHOLOMEW

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Attorneys for Citizens Communications

Company of Tennessee, d/b/a Frontier

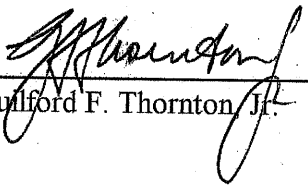
Communications of Tennessee

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by facsimile transmission and by first class mail postage prepaid this the 18th day of February, 2003 to:

Don Baltimore
Farrar & Bates LLP
211 Seventh Avenue North
Nashville, Tennessee 37219

Richard Collier
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238



Guilford F. Thornton, Jr.